

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PERRY SPANN,

Plaintiff,

v.

Case No. 1:21-cv-00709-MIS-SCY

THE NEW MEXICO BOARD
OF BAR EXAMINERS,

Defendant.

**ORDER ADOPTING PROPOSED FINDINGS AND RECOMMENDED DISPOSITION,
GRANTING MOTION TO DISMISS FOURTH AMENDED COMPLAINT, DISMISSING
FOURTH AMENDED COMPLAINT WITHOUT PREJUDICE, DENYING MOTION
FOR LEAVE TO FILE A FIFTH AMENDED COMPLAINT, AND CLOSING CASE**

THIS MATTER is before the Court on United States Magistrate Judge Steven C. Yarbrough's Proposed Findings and Recommended Disposition ("PFRD"), ECF No. 190, issued April 3, 2024. Judge Yarbrough recommends dismissing Plaintiff Perry Spann's Fourth Amended Complaint because Defendant New Mexico Board of Bar Examiners ("NMBBE") is entitled to Eleventh Amendment immunity against Plaintiff's only remaining claim, which alleges a violation of Title III of the Americans with Disabilities Act ("ADA"). Id. at 11-16. Specifically, Judge Yarbrough found that NMBBE is an arm of the state, id. at 12-13, and that none of the exceptions to Eleventh Amendment immunity apply, id. at 13-16. In this regard, Judge Yarbrough found, inter alia, that Title III of the ADA does not validly abrogate New Mexico's sovereign immunity in the context of professional licensing. Id. at 15 (citing Glueck v. Nat'l Conf. of Bar Exam'rs, Civil Action No. SA-17-CV-451-XR, 2017 WL 5147619, at *6 (W.D. Tex. Nov. 3, 2017); Simmang v. Tex. Bd. of Law Exam'rs, 346 F. Supp. 2d 874, 882 (W.D. Tex. 2004)).

Judge Yarbrough further recommends denying Plaintiff's Motion for Leave to File a Fifth Amended Complaint¹ ("Motion to Amend") because: (1) Plaintiff's stated reasons supporting her motion to amend are disingenuous, id. at 4-7; (2) the proposed amendments are untimely, id. at 7-8; (3) Plaintiff has failed to justify the delay in her request to amend, id. at 8-9; and in any event, (4) amendment would be futile because NMBBE is entitled to Eleventh Amendment immunity against the claim asserted in the proposed Fifth Amended Complaint—to wit, a violation of Title III of the ADA, id. at 9.


On April 17, 2024, Plaintiff filed Objections to the PFRD. ECF No. 191. Plaintiff objects to Judge Yarbrough's finding that Congress did not validly abrogate state sovereign immunity for claims under Title III of the ADA. Id. at 3-11. However, Plaintiff does not specifically object to (or otherwise mention) Judge Yarbrough's findings regarding the Motion to Amend (although the Court recognizes that her argument that Title III of the ADA validly abrogates state sovereign immunity would apply equally to Judge Yarbrough's finding that amendment would be futile because NMBBE is entitled to Eleventh Amendment immunity).

Pursuant to Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of the record and all parts of the Magistrate Judge's PFRD that have been properly objected to. After conducting this de novo review and having thoroughly considered the PFRD and the objections, the Court finds no reason either in law or fact to depart from the Judge Yarbrough's recommended disposition.

¹ As Judge Yarbrough explains: "Plaintiff's motion is titled 'Motion for Leave to File a Fourth Amended Complaint,' Doc. 181, but as the operative complaint in the case is already the fourth amended complaint, Plaintiff is actually seeking leave to file the next iteration of her complaint, the fifth amended complaint." ECF No. 190 at 4 n.3.

Therefore, it is **HEREBY ORDERED** that:

1. Plaintiff's Objections, ECF No. 191, are **OVERRULED**;
2. Judge Yarbrough's Proposed Findings and Recommended Disposition, ECF No. 190, is **ADOPTED**;
3. Defendant New Mexico Board of Bar Examiners' Motion to Dismiss Fourth Amended Verified Complaint, ECF No. 177, is **GRANTED**;
4. The Fourth Amended Complaint, ECF No. 175, is **DISMISSED without prejudice** for lack of subject matter jurisdiction;
5. Plaintiff's Motion for Leave to File a Fifth Amended Complaint, ECF No. 181, is **DENIED**;
6. All other pending motions are **DENIED AS MOOT**;
7. This case is now **CLOSED**; and
8. The Court will separately enter Final Judgment.



MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE